



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 10  
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APR. - 8 2011

OFFICE OF  
ECOSYSTEMS, TRIBAL AND  
PUBLIC AFFAIRS

Colonel Anthony Wright  
U.S. Army Corps of Engineers  
Seattle District - Regulatory Branch  
Attention: Tina Tong, Senior Scientist  
P.O. Box 3755  
Seattle, Washington 98124-3755

RE: Proposal to Reissue and Modify Nationwide Permits - Request for Comments on  
Regional Conditions, Seattle District Special Public Notice, February 22, 2011.

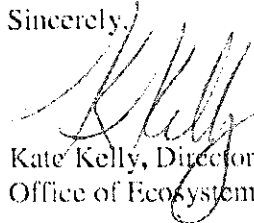
Dear Colonel Wright:

The U.S. Environmental Protection Agency (EPA) has reviewed the February 22, 2011, Special Public Notice soliciting comments on proposed options for Regional Conditions for the Proposal to Reissue and Modify Nationwide Permits. We are providing our detailed comments in the enclosure. We wish to thank the Corps for engaging us and other agencies in this process via the inter agency work group. We are hopeful that the work group's discussion and these comments will result in the adoption of regional conditions protective of aquatic resources in Washington.

As you know the Puget Sound is one of the most ecologically diverse ecosystems in North America. It is a place of rare biological diversity and high economic value. Like the Corps, EPA is committed to improving the health and productivity of this region. Like you, we are concerned that without strong protections and actions in place, we will be unable to meet the designated recovery targets for the ongoing Puget Sound efforts. With regard to your proposal to reissue and modify the Nationwide Permits, EPA has significant concerns about cumulative impacts to Puget Sound. We are, therefore, encouraging the Corps to adopt regional conditions that will be most protective of Puget Sound shorelines and Puget Sound marine and estuarine waters. We articulated these thoughts generally in a letter from Regional Administrator McLerran to Brigadier General McMahon dated December 27, 2010. The enclosed comments detail the Regional Conditions that we encourage you to adopt in Puget Sound and include other suggestions designed to protect aquatic resources of concern throughout the Corps' Seattle District.

Please contact me at 206-553-1271, with any general questions or concerns. For clarification or further coordination on the development of the Nationwide Permit Regional Conditions in Seattle District, please contact Linda Storm at (206) 553-6384, or [storm.linda@epa.gov](mailto:storm.linda@epa.gov).

Sincerely,



Kate Kelly, Director  
Office of Ecosystems, Tribal and Public Affairs

Enclosures

cc: NOAA-Fisheries – William Stelle, Jr., Tami Black  
USFWS – Robyn Thorson, Nancy Brennan-Dubbs  
WDNR – Kristin Swendall, David Palazzi, & Lalena Amiotte  
WDFW – Randi Thurston  
WDOE – Loree Randall  
EPA – Washington Operations Office Director (Tom Eaton)  
EPA – Puget Sound Program Director (Linda Anderson-Carnahan)

**U.S. EPA Region 10's Comments on the U.S. Army Corps of Engineers, Seattle Districts'  
Special Public Notice Dated February 22, 2011**

**Soliciting Comments on Nationwide Permit Regional Conditions**

The following are EPA's comments formatted to follow the structure in the Nationwide Permit – under both Section A. General Regional Conditions and Section B. Nationwide Specific Regional Conditions:

**A. GENERAL REGIONAL CONDITIONS**

**1. Aquatic Resources Requiring Special Protection**

EPA requests:

- Adding the following aquatic resources to the list:
  - *“Wetlands in dunal systems along the Washington coast, vernal pools, camas prairie wetlands, estuarine wetlands, and wetlands in coastal lagoons.”*
- Adding the following to the list of aquatic resources requiring special protection:
  - *“Kelp beds and fish spawning grounds in Puget Sound and other marine waters.”*
- Changing the existing 1b to 1a, to clarify that all of the listed aquatic resources are excluded from authorization under NWP in the Seattle District.
- Changing the current list of NWPs for which this General Regional Condition does not apply to be modified to reflect
  - **The national FR notice change that NWP 47 is being removed, and**
  - **The removal of NWP 3 – Maintenance from this list at the Regional level.**

**2. Bank Stabilization**

EPA requests:

- Adding the following language to b.
  - *“The notification must also include a justification for the need to place fill or structures waterward of the ordinary high water mark (in fresh waters) or mean higher high water mark (in marine/estuarine waters) instead of in the adjacent uplands (dry land).”*
- Adding the following conditions:
  - *“NWP 13 cannot be utilized for any new bank stabilization activities in Puget Sound – defined as all salt waters of the state of Washington inside the international boundary line between the state of Washington and the province of British Columbia, lying east of one hundred twenty four degrees, forty four minutes west longitude.”*
    - Note: Puget Sound is a Nationally Significant Estuary under Clean Water Act Part 320. Reducing shoreline alteration, bank armoring and habitat loss is one of the top priority issues identified by the Puget Sound Partnership and the state of Washington's Governors Office

([http://www.psp.wa.gov/downloads/AA2009/Action\\_Agenda\\_FINAL\\_063009.pdf](http://www.psp.wa.gov/downloads/AA2009/Action_Agenda_FINAL_063009.pdf)). It is also a key priority identified by the members of the Puget Sound Federal Caucus.

- ***“If a new bank stabilization activity is proposed in marine waters, other than Puget Sound, you must also submit a geotechnical analysis, the location of the nearest feeder bluff, the length of existing bank stabilization on the project site and adjacent parcels, information on spawning habitat in the project area and an evaluation of the expected effects on nearshore drift, spawning habitat, and aquatic vegetation.”***
- ***“NWP 13 cannot be utilized for any new bank stabilization activities in other waters (including marine, estuarine, lakes, and perennial streams) supporting anadromous fish spawning reaches, unless bioengineering methods or technologies are used.”***
- ***“NWP 13 requires compensatory mitigation for impacts to aquatic resources from bank stabilization.”***
- ***“No more than 300 linear feet would be authorized.”***

The cumulative impacts of even small projects is damaging to the health of the Puget Sound (see June 2010 Revised Edition. Protecting Nearshore Habitat and Functions in Puget Sound, WDFW Publication). Endangered Species Act (ESA) listed species, including a number of runs of anadromous salmonids, are impacted by shoreline habitat losses. Armoring occurs along 27% of the Puget Sound (with the percent of armoring varying across major sub-basins from approximately 9 to 63%). The south-central sub-basin (city of Seattle area) is the most heavily armored. Shoreline alteration is more damaging when the further encroachment occurs into the inter-tidal zone. By reducing such activities (and encouraging applicants to demonstrate a clear and legitimate need and to use bioengineering approaches when a need is demonstrated), impacts will be significantly reduced.

### **3. State-Owned Aquatic Lands**

EPA requests adding the following language:

- ***“All projects or work proposed to occur on State-owned aquatic lands will require separate authorization from the Washington Department of Natural Resources (WDNR). For further information contact the WDNR’s Aquatic Resources Division at (360) 902-1100 or Leasing & Land Transaction.”***
  - Note: this language is suggested as one way to help meet WDNR’s concerns regarding the need to address cumulative impacts of NWP permits that could occur on State-owned aquatic lands. This general regional condition could help ensure that the regulated public is made aware of and seeks appropriate approvals from WDNR and would help to ensure that coordination occurs for these authorizations.

#### **4. Fish Bearing Perennial Streams**

EPA requests the following General Regional Condition:

- *"No activity can result in loss of fish bearing stream bed habitat, except for in NWP's (To be determined)."*
  - EPA requests the detailed list of NWPs be determined by the interagency-work group.

#### **NWP-SPECIFIC REGIONAL CONDITIONS**

##### **NWP #3 Maintenance**

EPA requests adding the following Regional Conditions:

- *"Bank stabilization maintenance actions [in fish bearing waters of the U.S.] that extend beyond their prior footprint are not authorized under this NWP unless the net result has less environmental impact. For example, if the existing bank stabilization activity is a vertical concrete bulkhead and the footprint needs to be expanded to repair a portion of the bulkhead, to use this NWP for the repair work, the portion to be repaired could be constructed out of rocks placed on a slope with large woody material embedded in the rock."*
- *"Paragraph (b). For activities that involve dredging accumulated sediment from the vicinity of outfalls, pre-construction notification to the Corps must include a short "reason to believe" analysis on the potential for sediment contamination at that location. This description will inform the decision of whether particular dredging BMPs would be required, or whether sediment testing would be required, even if the material goes to an upland disposal area. Dredging of contaminated sediments (i.e. do not meet SQS) could result in water quality impacts if BMPs are not used during the dredging and dewatering of material."*

##### **NWP #7 Outfall Structures and Associated Intake Structures**

EPA requests adding the following Regional Conditions:

- *"The pre-construction notification must include the following information: the location and size of any kelp and eelgrass beds in the project vicinity (a survey may be required) and the location and size of forage fish (e.g., insert species names here) documented and potential spawning areas in the project vicinity."*
- *"If construction will involve disturbances of sediments, the preconstruction notification must include a short "reason to believe" analysis on the potential for sediment contamination at that location. This description will inform the decision of whether particular BMPs would be required, or whether sediment testing would be required, even if any associated sediment disposal is in an upland disposal area."*
- *"Ensure that outfalls are not sited in and are adequately set back/buffered away from shallow or submerged vegetation (including eel grass beds, etc.)."*
- *"Require surveys to ensure siting and design take into consideration avoidance and minimization measures, such that intake structures and outfall pipes, the impacts from*

*trenching, scour, temperature, freshwater discharges, etc. do not impair aquatic resources of concern."*

#### **NWP # 13 Bank Stabilization**

EPA has significant concerns about this NWP with regard to its potential contribution to cumulative losses of aquatic habitats in Puget Sound as well as fish bearing streams and lake shores of the state of Washington. Restricting new bank stabilization activities in Puget Sound is warranted given the existing degree of shoreline alteration and cumulative losses, and our agencies' commitment to addressing losses. Any expansions of bank stabilization activities resulting in bank hardening add to the lossess.

EPA requests the following additions or changes to the existing and proposed Regional Conditions:

- *"No activity may occur within Puget Sound."*
- *"For new bank stabilization activities in waters of the U.S., outside of Puget Sound, no activity can occur below the plane of the ordinary high water mark or the high tide line, unless bioengineering approaches are used."*
- *"No activity can be greater than 300 feet in length along the bank."*
- *"DE waivers cannot be granted for this NWP."*
- *"Compensatory mitigation for new bank stabilization activities is required."*

#### **NWP # 14 Linear Transportation Projects**

EPA requests the following clarification language be added to Regional Condition 1:

- *"For the width requirement, "footprint" refers to the footprint of the width of the roadway fill prism."*

#### **NWP # 17 Hydropower Projects**

EPA requests that this Nationwide Permit be rescinded in the Seattle District. Hydropower projects cause significant impacts to headwaters and streams and require more thorough environmental review.

#### **NWP #19 Minor Dredging.**

EPA requests adding the following language for consistency:

- *"Submerged aquatic vegetation" to "riffle-pool complexes and mudflats."*

EPA requests adding the following language:

- *"Pre-construction notification to the Corps must include a short "reason to believe" analysis on the potential for sediment contamination at that location. This description will inform the decision of whether particular dredging BMPs would be required, or whether sediment testing would be required, even if the material goes to an upland disposal area. Dredging of contaminated sediments (i.e. do not meet SQS) could result*

*in water quality impacts if BMPs are not used during dredging and dewatering of material."*

#### **NWP #21 Surface Coal Mining Operations**

EPA requests adding the following language:

- *"The discharge must not cause the loss of more than 300 linear feet of an intermittent or ephemeral stream bed."*
- *"Work is not authorized in fish bearing perennial streams."*

#### **NWP # 23 Approved Categorical Exclusions**

EPA requests adding the following language as a Regional Condition:

- *"The discharge must not cause the loss of greater than one-half acre of non-tidal waters of the U.S., including the loss of no more than 300 linear feet of intermittent or ephemeral stream beds."*
- *"No activity can result in the loss of a fish bearing perennial stream bed."*

#### **NWP # 27 Aquatic Habitat Restoration, Establishment, and Enhancement Activities**

EPA requests adding the following clarifying language:

- *"No shellfish seeding."*
- *"Provide baseline conditions assessment, monitoring and reporting."*
- *"Provide details on how the project will benefit the aquatic environment."*

#### **NWP # 28 Modifications of Existing Marinas**

- EPA requests that the Corps apply WDNR Aquatic Resources Program recommendations to apply specific construction BMPs

#### **NWP # 29 Residential Developments**

EPA requests adding the following language as a Regional Condition to help ensure this NWP does not result in more than minimal impacts.

- *"The District Engineer variance or waiver allowance is not allowed."*
- *"No activity can result in the loss of greater than 300 linear feet of intermittent and ephemeral stream beds."*
- *"No activity can result in the loss of a fish bearing perennial stream bed."*

#### **NWP #31 Maintenance of Existing Flood Control Facilities**

EPA requests the Corps work with the inter agency work-group to address development of a Regional Condition that will ensure vegetation on levees is managed to meet requirements for ESA-listed species and water quality in State-listed waters.

If dredging is part of the maintenance activity, notification should also include a "reason to believe" analysis and any sediment testing information. This can inform BMPs and disposal site decisions. EPA requests adding the following language:

- ***"For activities involving dredging accumulated sediment, pre-construction notification to the Corps must include a short "reason to believe" analysis on the potential for sediment contamination at that location. This description will inform the decision of whether particular dredging BMPs would be required, or whether sediment testing would be required, even if the material goes to an upland disposal area. Dredging of contaminated sediments (i.e. do not meet SQS) could result in water quality impacts if BMPs are not used during dredging and dewatering of material."***

#### **NWP #33 Temporary Construction, Access, and Dewatering.**

Allows movement of dredged material to be used as fill during construction, and then replaced following use. Pre-construction notification should include whether there is reason to believe contamination could be present. EPA requests adding the following language:

- ***"For activities involving dredging, pre-construction notification to the Corps must include a short "reason to believe" analysis on the potential for sediment contamination at that location. This description will inform the decision of whether particular dredging BMPs would be required, or whether sediment testing would be required. Movement of contaminated sediments (i.e. do not meet SQS) could result in water quality impacts if BMPs are not used."***

#### **NWP #35 Maintenance Dredging of Existing Basins**

This is the only NWP that has current regional conditions encouraging contact with DMMO during project planning. EPA requests the following language:

- ***Pre-construction notification to the Corps must include a short "reason to believe" analysis on the potential for sediment contamination at that location. This description will inform the decision of whether particular dredging BMPs would be required, or whether sediment testing would be required, even if the material goes to an upland disposal area. Dredging of contaminated sediments (i.e. do not meet SQS) could result in water quality impacts if BMPs are not used during dredging and dewatering of material."***

#### **NWP # 36 Boat Ramps**

EPA requests adding the following language:

- ***"The permittee must submit a pre-construction notification to the District Engineer in accordance with General Condition 27 (Pre-Construction Notification) for boat ramps wider than 12 feet or located on documented or potential surf smelt (*Ammodytes hexapterus*), Pacific herring (*Clupea pallasii*), sand lance (*Hypomesus pretiosus*), candlefish (*Thaleichthys pacificus*), or salmon spawning beaches or if submerged aquatic vegetation is removed or disturbed. Spawning beach location information can be obtained from the StreamNet database (see <http://www.streamnet.org>) or the***



*SalmonScape database (see <http://wdfw.wa.gov/mapping/salmonscape/index.html>) and other sources."*

- *"For contiguous properties under the same ownership, no more than one boat ramp per ownership may be authorized by this NWP."*
- *"The construction of poured-in-place concrete boat ramps is not authorized by this NWP."*
- *"The discharge into waters of the U.S. cannot exceed 50 cubic yards."*

#### **NWP #42 Recreational Activities**

EPA requests adding the following Regional Conditions :

- *"No activity can result in the loss of greater than 300 linear feet of intermittent and ephemeral stream beds."*
- *"No activity can result in the loss of a fish bearing perennial stream bed."*

#### **NWP # 43 Stormwater Management Facilities**

EPA requests adding the following language as a Regional Condition be added:

- *"The District Engineer variance or waiver allowance is not allowed."*
- *"No activity can result in the loss of greater than 300 linear feet of intermittent and ephemeral stream beds."*
- *"No activity can result in the loss of a fish bearing perennial stream bed."*
- *"No activity can result in the loss of headwater wetlands that support streamflow maintenance in ESA listed streams."*

#### **NWP # 44 Mining Activities**

EPA requests that this NWP have the same restrictions as NWP 21 as follows:

- *"No activity can result in the loss of greater than 300 linear feet of intermittent and ephemeral stream beds."*
- *"No activity can result in the loss of a fish bearing perennial stream bed."*
- *"Placer mining activities are not authorized under this NWP."*
- *"The District Engineer variance or waiver allowance is not allowed."*

#### **NWP #45 Repair of Uplands Damaged by Discrete Events**

EPA requests that Notification include a "reason to believe" analysis similar to NWP #3 b above (e.g. a recent example could be repair of tsunami-affected areas in coastal Oregon).

#### **NWP # 48 Existing Commercial Shellfish Aquaculture Activities**

EPA does not support the removal of a reporting requirement for NWP 48 in the state of Washington as proposed at the National level. We request adding the following language as a Regional Condition:

- *“Interagency coordination with appropriate State agencies (WDNR, WDFW and Ecology as they determine appropriate) is required.”*

#### **NWP # 49 Coal Remining Activities**

EPA request that this NWP have the same restrictions as NWP 21

- *“No activity may result in the loss of greater than one half acre of non-tidal waters of the U.S.”*
- *“No activity can result in the loss of greater than 300 linear feet of intermittent and ephemeral stream beds.”*
- *“No activity can result in the loss of a fish bearing perennial stream bed.”*

#### **NWP # 50 Underground Coal Mining Activities**

EPA request that this NWP have the same restrictions as NWP 21

- *“No activity can result in the loss of greater than 300 linear feet of intermittent and ephemeral stream beds.”*
- *“No activity can result in the loss of a fish bearing perennial stream bed.”*

#### **Newly Proposed NWP A - Land Based Renewable Energy Production**

EPA recommends this NWP be revoked in Seattle District because of the unspecified and unknown scope, magnitude, and impacts of these kinds of projects.

#### **Newly Proposed NWP B - Hydrokinetic Energy Production**

EPA recommends this NWP be revoked in Seattle District, because of the unspecified and unknown scope, magnitude, and impacts of these kinds of projects.

#### **Newly Proposed NWP C - Wind Energy Project in Non-Federal Waters**

EPA recommends this NWP be revoked in Seattle District, because the scope and magnitude of impacts from wind farms, in our experience, can cause more than minimal adverse impacts to the environment, including impacts to sensitive aquatic resources (vernal pools, streams) in the arid environment.